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FILED

SEP - 2 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEFFREY WALKER
Plaintiff(s),

v.

JANE LEVELLE et al,
Defendant(s)

NO. C08-0801 CRB (PR) NOTICE OF
MOTION AND MOTION FOR THE
APPOINTMENT OF COUNSEL, WITH SUPPORTING
MEMORANDUM, DECLARATION, AND POINTS
AND AUTHORITIES.

AFFIDAVIT IN SUPPORT OF THE PLAINTIFFS MOTION FOR THE
APPOINTMENT OF COUNSEL.

1. I am the plaintiff in the above entitled case. I MAKE THIS
AFFIDAVIT IN SUPPORT OF MY MOTION FOR THE APPOINTMENT OF COUNSEL

2. THE complaint in this case alleges denial of mental health
treatment, numerous injuries were staff had watched and super-
visors had failed to prevent or intervene to stop such acts

3. It also alleges numerous trips to hospital were separate staff
medical and mental health documented separate opinions than
the jail.

4. This is a complex case because it contains several
different legal claims, with each claim involving a different
set of defendants

- 1 5. THE PLAINTIFF HAS DEMANDED A JURY TRIAL.
- 2 6. THE CASE WILL REQUIRE DISCOVERY OF DOCUMENTS AND DEPOS-
- 3 ITIONS OF A NUMBER OF WITNESSES
- 4 7. THE CASE WILL REQUIRE EXPERT TESTIMONY BECAUSE OF MENTAL HEALTH
- 5 ISSUES AS WELL AS MEDICAL
- 6
- 7 8. THE TESTIMONY WILL BE SHARP CONFLICT, SINCE PLAINTIFF ALLEGES
- 8 THAT DEFENDANTS DENIED HIM ADEQUATE MENTAL HEALTH TREATMENT,
- 9 PLACED HIM IN CELLS SAFELY FOR PUNISHMENT AND NOT FOR TREATMENT,
- 10 AND WERE SEVERAL INJURIES OCCURRED, UTILIZING RECEIVED IN ERROR WHERE
- 11 INJURIES WERE CAUSED IN SAFETY CELL.
- 12
- 13 9. INCLUDING A CAPTAIN OF THE JAIL, MENTAL HEALTH SITE MANAGER
- 14 AND OTHERS INVOLVED WITH THE IMPLEMENTATION OF A PLAN NOT FOR
- 15 MENTAL HEALTH REASONS IN WHICH DUE TO THEIR NEGLIGENCE AND DEL-
- 16 IBERATE INDIFFERENCE CAUSED PLAINTIFF TO INJURE HIMSELF - WERE
- 17 DENIED OF ADEQUATE MENTAL HEALTH TREATMENT AND APPROPRIATE HOUSING
- 18 WAS DENIED.
- 19
- 20 10. THE PLAINTIFF HAS LIMITED EDUCATION AND NO REAL LOW EXPERIENCE
- 21 AND WILL BE GOING UP AGAINST SKILLED FIRM AND LITIGATORS.
- 22
- 23 11. PLAINTIFF IS ALSO A MENTAL HEALTH PATIENT AT CALIFORNIA
- 24 MEDICAL FACILITY AT VACAVILLE STATE PRISON WHOSE MENTAL HEALTH
- 25 MAY CAUSE PROBLEMS IN STAYING FOCUSED AND OTHER ISSUES THAT
- 26 WILL OR MAY CAUSE DEFECTION IN TREATMENT DUE TO THE REMEMBRANCE
- 27 OF THIS PAST TRAUMA.
- 28

1 13. Plaintiff is also incapable of Investigating and gathering
2 all the eyewitnesses inmates who were present or locating them.
3 due to my incarceration
4

5 14. As set forth, in memorandum of Law submitted with this
6 motion, these facts, along with the legal merit of the plaintiffs
7 claims, support the appointment of counsel to represent
8 plaintiff.
9

10 Wherefore, the plaintiff motion for the appointment of counsel
11 should be granted.
12

13 Jeffrey Walker

14
15 I swear under penalty of perjury the foregoing statements
16 are true, sworn to me this:

17
18 24 Day of Aug 2008

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20 Jeffrey Walker
21 Jeffrey Walker
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MEMORANDUM OF LAW IN SUPPORT OF THE PLAINTIFFS
MOTION FOR THE APPOINTMENT OF COUNSEL.

Statement of the case:

This is a civil rights case filed under 42 U.S.C. § 1983 by a state prisoner and asserting claims for the Deliberate-Indifference and Denial of Adequate Mental Health treatment among other things and despite his mental health history, named defendants placed him often in situations where he was likely to injure himself or attempt suicide, were medical injuries are noted.

STATEMENT OF FACTS:

The complaint alleges that starting from the months of June 2005 to Jan-17-2006 mental health and custody had both placed plaintiff in threatening and paranoid situations that has resulted in self injurious behavior and suicidal behavior and in all situations caused mental deterioration.

On numerous occasions plaintiff was placed in safety cell not for mental health treatment but for punishment, plaintiff had asked for help and was denied were staff had on numerous occasions watched plaintiff hurt himself. Even during a time where it was noted by mental health staff that plaintiff was a high risk for suicide towards his sentencing date, staff had elected to move plaintiff to a new mental health unit where plaintiff injured

1 Himself, prior to that staff had new plaintiff was
 2 suicidal and a threat to others and yet forced plaintiff
 3 into a cell with another inmate, plaintiff slit his wrist
 4 with a Razor Blade three times in the same day were
 5 each time after, he was placed back into his cell to do
 6 it again.
 7 It was noted in medical reports that a plan was put
 8 together by Captain Sabrina Butler, Jane Lovelle, Etc. all
 9 to remove plaintiff from mental health denying him of
 10 adequate mental health treatment and moved him into
 11 Adsec for disciplinary placement with another inmate
 12 in which he cut his wrist three times in one day, then
 13 when kept for three days at hospital S.F. General,
 14 plaintiff was brought back to the same cell and did it
 15 all over again. plaintiff was denied his rights to the
 16 equal protection of the laws and adequate mental health
 17 treatment, was placed in threatening situations that caused
 18 injuries, and other times were staff sat and watched
 19 plaintiff injure himself. Defendants denied him treatment
 20 Etc.

21 ARGUMENT

22 In deciding rather to appoint counsel for an individual or
 23 indigent inmate litigant the court should consider "the factual
 24 complexity of the case, the ability of the indigent to investigate
 25 the facts, the existence of conflicting testimony, the ability
 26 of the indigent to present his claim and the complexity of
 27 the legal issues. Abdullah v Gunter 949 F.2d 1032, 1035
 28 8th Cir. 1991) citation omitted cert denied 112 S.Ct 1995 (1992)

In addition the courts have suggested that the most important factor is whether the case appears to have merit.

Cooper v A. SARGENTI CO. INC. 877 F.2d 170, 173 (2d Cir 1989)
Each of those factors weigh in favor of appointing a counsel in this case.

1. Factual complexity. The plaintiff alleges that on more than one occasion he was placed in threatening situations that resulted in self injuries before denying plaintiff of mental health treatment where he was instead punished placed in safety cells by mental health staff and captain of Jail not for treatment but for punishment. Acts were on numerous occasion other staff have done the same and even watched plaintiff injure himself and do nothing about it. The sheer number of claims and defendants makes this a factually complex case.

In addition since medical care denial is an issue it will probably be necessary to present a medical and mental health Expert witness or ~~the~~ cross examine medical or mental health called by the defendants or both. The presence of medical or mental health or other issues requiring Expert testimony supports the appointment of counsel.
Moore v Mabius, 976 F.2d 268, 272 (5th Cir 1992) Jackson v County of McLean, 953 F.2d 1070, 1073, (7th Cir 1992)
Tucker v Randall, 948 F.2d 388, 392 (7th Cir 1991)

1 2. The plaintiff's ability to Investigate.

2 The plaintiff is locked up in prison he is unable to
 3 identify, locate and interview, or investigate the facts, and
 4 eyewitnesses have been transferred or released who were located
 5 in cells and witnessed numerous acts, a factor that several
 6 courts have cited in appointing counsel, *Tucker v. Randall*
 7 948 F.2d 388, 391-92 (7th Cir 1991) *Catson v. Coughlin*
 8 679 F. Supp. 270, 273 (W.D. Mo. 1988) *Armstrong v. Snyder*
 9 103 F.R.D. 96 105 (E.D. Wis 1984) In addition this case
 10 will require considerable discovery concerning the identity of
 11 witnesses and the officers and staff reports, and statements
 12 about the incident, the history of the officers with prior
 13 records of misconduct and the plaintiff's medical and
 14 mental health history *Tucker v. Dickert* 613 F. Supp 1124
 15 1133-34 (W.D. Wis 1985) need for discovery supported
 16 appointment of counsel),
 17

18 3. Conflicting testimony: The plaintiff's account of those acts
 19 is squarely about to be in conflict with statements of staff
 20 involved. The aspects of the case will be credibility contest
 21 between the defendants and the plaintiffs (and such inmate
 22 witnesses as can be located, the existence of those cred-
 23 itibility issues supports the appointment of counsel
 24 *Catson v. Coughlin* 679 F. Supp 270, 273 (W.D. Mo. 1988)

4. The ability of the indigent to present his claim:

The plaintiff is an indigent inmate with no legal training a factor that supports the appointment of counsel. *Whisenant v Xuym*, 739 F.2d 160, 163 (4th Cir 1984). In addition, he is confined to state prison with very limited access at this prison to legal materials and law library usage. A maximum of 4 hours a week x 4 weeks = 16 hours - equal to two full working days a month to research, draft, write, etc. *Roxes v Johnson*, 969 F.2d 700-703-04 (8th Cir 1992) citing lack of ready access to library as a factor supporting appointment of counsel.

5. Legal complexity. The large number of defendants, some of whom are supervisory officials, presents complex legal issues of determining which defendant were sufficiently personally involved in the constitutional violations to be held liable.

In addition plaintiff had asked for jury trial, which requires much greater legal skills than plaintiff Rasior can develop. *Abdullah v Gunter* 949 F.2d 1032, 1036 (8th Cir. 1991) citing jury demand as a factor supporting appointment of counsel. cert. denied 112 S.Ct. 1995 (1992)

1 b. merit of the case. The plaintiff allegation if
 2 proved, clearly would establish a constitutional violation.
 3 The deliberate indifference to serious medical needs
 4 denial of adequate mental health treatment among other
 5 things. placing plaintiff in situations that was likely
 6 to cause injuries or attempt suicide in violation of
 7 Eighth Amendment Rights against cruel and unusual punish-
 8 ment.
 9 *Estelle v Gamble* 429 U.S. 97, 104. (1976)

10
 11 And the deliberate indifference claims same case.
 12 on its face, then, this is a meritorious case.
 13

14 CONCLUSION

15
 16
 17 For the foregoing reasons, the court should grant the
 18 plaintiff's motion and appoint counsel in this case.
 19

20 Date: Aug - 24 - 08

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 22 x Jeffrey Walker

23 Jeffrey Walker

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